

RESOLUTION NO. 2014-56

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF HUNTINGTON BEACH
APPROVING AND IMPLEMENTING THE MEMORANDUM OF UNDERSTANDING
BETWEEN THE FIRE MANAGEMENT ASSOCIATION (FMA) AND THE CITY FOR
OCTOBER 1, 2013 THROUGH SEPTEMBER 30, 2015**

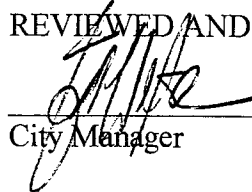
The City Council of the City of Huntington Beach does resolve as follows:

The Memorandum of Understanding between the City of Huntington Beach and the Fire Management Association (FMA), a copy of which is attached hereto as Exhibit "A" and by reference made a part hereof, is hereby approved and ordered implemented in accordance with the terms and conditions thereof; and the City Manager is authorized to execute this Agreement. Such Memorandum of Understanding shall be effective for the term of October 1, 2013 through September 30, 2015.

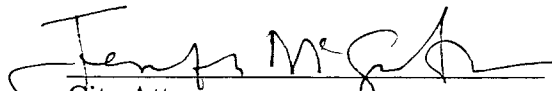
PASSED AND ADOPTED by the City Council of the City of Huntington Beach at a regular meeting thereof held on the 2nd day of September, 2014.


Mayor

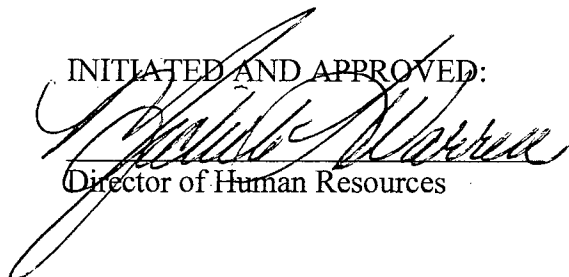
REVIEWED AND APPROVED:


City Manager

APPROVED AS TO FORM:


City Attorney

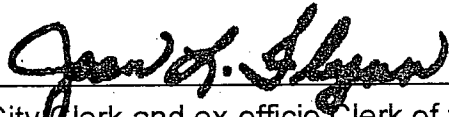
INITIATED AND APPROVED:


Director of Human Resources

STATE OF CALIFORNIA
COUNTY OF ORANGE) ss:
CITY OF HUNTINGTON BEACH)

I, JOAN L. FLYNN the duly elected, qualified City Clerk of the City of Huntington Beach, and ex-officio Clerk of the City Council of said City, do hereby certify that the whole number of members of the City Council of the City of Huntington Beach is seven; that the foregoing resolution was passed and adopted by the affirmative vote of at least a majority of all the members of said City Council at a **Regular** meeting thereof held on **September 2, 2014** by the following vote:

AYES: Katapodis, Hardy, Shaw, Harper, Boardman, Sullivan, Carchio
NOES: None
ABSENT: None
ABSTAIN: None



City Clerk and ex-officio Clerk of the
City Council of the City of
Huntington Beach, California

Memorandum of Understanding

Between

**Huntington Beach
Fire Management Association**

And

City of Huntington Beach



October 1, 2013 – September 30, 2015

**MEMORANDUM OF UNDERSTANDING
HUNTINGTON BEACH FIRE MANAGEMENT ASSOCIATION
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**MEMORANDUM OF UNDERSTANDING
BETWEEN
THE CITY OF HUNTINGTON BEACH, CALIFORNIA
(Herein Called CITY)
AND
THE HUNTINGTON BEACH FIRE MANAGEMENT ASSOCIATION
(Hereinafter Called ASSOCIATION)**

PREAMBLE

WHEREAS, the City of Huntington Beach and the Huntington Beach Fire Management Association (FMA) have met and conferred in good faith with respect to salaries, benefits and other terms and conditions of employment for the employees represented by the Association;

Except as expressly provided herein, the adoption of this Memorandum of Understanding (MOU) shall not change existing terms and conditions of employment, which have been established for the classifications represented by the Huntington Beach Fire Management Association.

NOW THEREFORE, this Memorandum of Understanding is made to become effective October 1, 2013, and it is agreed as follows:

ARTICLE I – TERM OF MOU

This Agreement shall be in effect for a period of twenty-four (24) months commencing October 1, 2013 and expiring on September 30, 2015.

This MOU constitutes the entire agreement of the parties as to the changes in wages, hours, and other terms and conditions of employment of employees covered hereunder for the term hereof. The Association shall have the option to extend the MOU for an additional one year period without any changes. If the Association wishes to do so, it must advise the City in writing (to the Human Resources Director) by May 31, 2015 at 5:00 p.m.

ARTICLE II – REPRESENTATIONAL UNIT

It is recognized that the Huntington Beach Fire Management Association is the employee organization which has the right to meet and confer in good faith with the City on behalf of represented employees of the Huntington Beach Fire Department within the classification titles of Fire Division Chief and Fire Battalion Chief as outlined in Exhibit A attached hereto and incorporated herein.

ARTICLE III – SEVERABILITY

If any section, subsection, sentence, clause, phrase or portion of this MOU or any additions or amendments thereof, or the application thereof to any person, is for any reason held to be invalid or unconstitutional by the decision of any court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of this resolution or its application to other persons. The City Council hereby declares that it would have adopted this MOU and each section, subsection, sentence, clause, phrase or portion, and any additions or amendments thereof, irrespective of the fact that any one or more sections, subsections, sentences, clauses, phrases or portions, or the application thereof to any person, be declared invalid or unconstitutional.

ARTICLE IV – MANAGEMENT RIGHTS

The City and the Fire Chief retain all rights, powers and authority to manage and direct the performance of fire services and the workforce, except as modified by the Memorandum of Understanding.

The parties agree that the City has the right to unilaterally make decisions on all matters that are outside the scope of bargaining. Such matters include, but are not limited to, consideration of the merits, necessity, level or organization of fire services, staffing requirements, extra duty assignments, number and location of work stations, nature of work to be performed, contracting for any work or operation, reasonable employee performance standards, reasonable work and safety rules and regulations.

ARTICLE V – SALARY SCHEDULES AND RETIREMENT

A. Monthly Compensation

Employees shall be compensated at hourly rates by job code and pay grade during the term of this Agreement as set out in Exhibit A attached hereto and incorporated herein unless expressly provided for in other Articles of this Memorandum of Understanding.

B. Wage Increases

Effective the beginning of the pay period following City Council approval of this agreement; all unit employees will receive a 4.75% wage increase;

Effective the beginning of the pay period that includes October 1, 2014, all unit employees will receive a 2.0% wage increase.

C. California Public Employees' Retirement System (CalPERS) Pick-up

- a. The City shall provide all safety employees described as "classic members by the Public Employees' Pension Reform Act of 2013 – "PEPRA" with that certain retirement program commonly known and described as the "3%" at age 50 plan" which is based on the retirement formula as set forth in the California Public Employees' Retirement System (PERS), Sections 21362.2 of the California Government Code, including the one-half continuance option (Government Code Sections 21624 and 21626) for safety employees and the Fourth Level of the 1959 survivor option for all employees as established by the California Public Employees' Retirement System, Section 21571 of the California Government Code.
- b. Effective October 1, 2013 through the beginning of the pay period following City Council approval of this MOU, all "classic members" shall pay as part of the required member retirement contribution an amount equal to six and three quarters percent (6.75%) of pensionable income to the Public Employees' Retirement System (PERS). The remaining portion of the required member retirement contribution (two and one quarter percent (2.25%) of pensionable income) shall be paid by the City.
- c. Effective at the beginning of the pay period following City Council approval of this MOU, all "classic members" shall pay to PERS as part of the required member retirement contribution an additional two and one quarter percent (2.25%) of pensionable income for a total of nine percent (9%) of pensionable income.
- d. The City has contracted with PERS to have retirement benefits calculated based upon the employee's highest one year's compensation, pursuant to the provisions of Section 20042 (highest single year).
- e. The obligations of the City and the retirement rights of employees as provided in this Article shall survive the term of this MOU
- f. The City provides the Pre-Retirement Optional Settlement 2 Death Benefit as set forth in California Government Code Section 21548 for all safety employees represented by the Association.
- g. For "New Members" within the meaning of the California Public Employees' Pension Reform Act of 2013.

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- 1) New Members shall be governed by the two and seven tenths percent at age 57 (2.7% @ 57) retirement formula set forth in Government Code section 7522.25(d)
 - 2) Final compensation will be based on the highest annual average compensation earnable during the 36 consecutive months immediately preceding the effective date of his or her retirement, or some other 36 consecutive month period designated by the member.
 - 3) Effective October 1, 2013, 'new members' as defined by PEPR shall contribute one half of the normal cost rate, as established by CalPERS.
- h. The City has adopted the CalPERS Resolution in accordance with IRS Code section 414(h)(2) to ensure that both the employee contribution and the City pickup of the required member contribution are made on a pre-tax basis. However, ultimately, the tax status of any benefit is determined by the law.

D. Self Funded Supplemental Retirement Benefit

Employees hired prior to August 17, 1998 are eligible for the Self Funded Supplemental Retirement Benefit, which provides that:

1. In the event an employee elects Option #1, #2, #2W, #3, #3W, or #4 of the Public Employees' Retirement Law, the City shall pay the difference between such elected option and the unmodified allowance which the employee would have received for his/her life alone as provided in California Government Code Sections 21455, 21456, 21457, and 21548 as said referenced Government Code sections exist as of the date of this agreement. This payment shall be made only to the employee, shall be payable by the City during the life of the employee, and upon that employee's death, the City obligation shall cease. The method of funding this benefit shall be at the sole discretion of the City. This benefit is vested for employees covered by this agreement.
2. Employees hired on or after August 17, 1998 shall not be eligible for this benefit.

E. Medical Insurance Upon Retirement

As required by the Government Code, while the City is contracted with CalPERS to participate in the Public Employees' Medical and Hospital Care

Act (PEMHCA) program, retired employees (annuitants) shall have available the ability to participate in the PEMHCA program. CalPERS shall be the sole determiner of eligibility for retiree (annuitant) to participate in the PEMHCA program.

The City's requirement to provide retirees (annuitants) medical coverage is solely governed by the Government Code requirement that PEMHCA agencies extend this benefit to retirees (annuitants). If by agreement between the Association and the City or if the City elects to impose termination of its participation in the PEMHCA program, retirees (annuitants) shall no longer be eligible for City provided medical insurance.

In the event that the City terminates its participation in the PEMHCA program, the retiree medical subsidy program in place in Resolution No. 2002-120 Exhibit B to the Memorandum of Understanding shall be reinstated. The City shall make any necessary modifications to conform to the new City sponsored medical insurance plan.

F. CalPERS Additional Benefits

1. The City shall provide all safety employees with the retirement program commonly known and described as the "3% at age 50 plan" which is based on the retirement formula as set forth in the CalPERS, Section 21362.2 of the California Government Code, including the one-half continuance option (Government Code Sections 21263 and 21263.1) for safety employees and the Fourth Level of the 1959 survivor option for all employees as established by the CalPERS, Section 21382 of the California Government Code.
2. The City shall continue to contract with CalPERS to have retirement benefits calculated based upon the employee's highest one year's compensation, pursuant to the provisions of Section 20042 (highest single year).
3. The obligations of the City and the retirement rights of employees as provided in this Article shall survive the term of this MOU.
4. Employees shall be covered by the Pre-Retirement Optional Settlement 2 Death Benefit as provided in Government Code Section 21548

G. Direct Deposit

All unit employees shall be required to utilize direct deposit of payroll checks.

ARTICLE VI –ADDITIONAL MANAGEMENT BENEFITS

A. Holiday Pay-In-Lieu

Employees shall be compensated by the City in lieu of the ten (10) listed holidays at the rate of 3.0768 hours multiplied by the employee's hourly rate set forth in Exhibit A, payable each and every pay period. The following are the recognized legal holidays under this MOU:

1. New Year's Day (January 1)
2. Martin Luther King's Birthday (third Monday in January)
3. President's Day (third Monday in February)
4. Memorial Day (last Monday in May)
5. Independence Day (July 4)
6. Labor Day (first Monday in September)
7. Veteran's Day (November 11)
8. Thanksgiving Day (fourth Thursday in November)
9. Friday after Thanksgiving
10. Christmas Day (December 25)

Any day declared by the President of the United States to be a national holiday, or by the Governor of the State of California to be a state holiday, and adopted as an employee holiday by the City Council of Huntington Beach.

Holidays which fall on Sunday shall be observed the following Monday, and those falling on Saturday shall be observed the preceding Friday.

Employees designated by the Fire Chief who are required to work regular shifts on the above listed holidays as set forth in this Article, shall not be entitled to time off or additional pay.

The parties agree, to the extent permitted by law, the compensation in this section is special compensation and shall be reported as such pursuant to Title 2 CCR, Section 571(a)(5) Holiday Pay.

B. Bilingual Skill Pay

Employees who are qualified to use Spanish, Vietnamese, or Sign Language skills shall be paid an additional five-percent (5%) of their hourly rate in addition to their regular bi-weekly salary. Employees may accept assignments utilizing bilingual skills in other languages on a short-term assignment with approval by the Fire Chief and City Administrator or designee. Such employees shall receive the additional five percent (5%)

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of their hourly rate for every bi-weekly pay period that the assignment is in effect. In order to be qualified for said compensation, employee's language proficiency will be tested and certified by the Human Resources Director or designee. Bilingual Skill Pay shall be effective the first full pay period following certification as verified to the Fire Chief in writing by the Human Resources Director or designee.

C. Professional Achievement Award

The City supports employee participation in the United States Fire Administration Executive Fire Officer Program (EFOP). The City will provide each participating employee, upon EFOP program acceptance, full payment of each required program course, time to attend the course for each required program year, and travel expense to attend the required course for each program year.

Upon presenting a certificate of completion from the United States Fire Administration's National Fire Academy for the Executive Fire Officer Program to the Human Resources Director, the employee will receive a one-time lump sum award of two thousand five hundred (\$2,500) dollars. The award shall be subject to all applicable state and federal taxes.

ARTICLE VII – UNIFORMS

The City agrees to provide uniforms to employees on active duty who are required to wear uniforms. For each eligible employee, the City will report to the CalPERS the average annual cost of uniforms provided by the City as special compensation in accordance with Title 2, California Code of Regulations, Section 571(a)(5). For employees who are not actively employed for an entire payroll calendar year, a prorated cost of uniforms shall apply. For "new members" as defined by the Public Employees' Pension Reform Act of 2013, the cost of uniforms will not be reported as compensation earnable to CalPERS.

ARTICLE VIII – WORK SCHEDULE/COMPENSATORY PAY/TIME OFF

A. Work Schedule

Employees assigned to suppression assignments shall work an average of fifty-six (56) hours per week pursuant to the current schedule of five (5) twenty-four (24) hour shifts in a fifteen (15) day period with six (6) consecutive days off. Total hours worked in a calendar year will equal two thousand nine hundred and twelve (2912) hours.

Employees assigned to non-suppression staff assignments shall work four (4) days per week, ten (10) hours each day, meal times to be included

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during the ten hour shift. Total hours worked in a calendar year will equal two thousand eighty (2080) hours.

B. Compensatory Pay

1. Prior approval to earn compensatory time

All employees must gain approval from Fire Chief in advance of accruing compensatory time. For approved compensatory time, employees working suppression duties earn compensatory pay or compensatory time off, on an hour for hour basis, for hours worked in addition to their regular schedule, subject to the limitations contained in Article VII.B.3. below.

2. Prior approval to work any hours in addition to regular schedule

- a. Battalion Chiefs must gain approval to work any hours that are in addition to their regular schedule in advance from a Division Chief. Division Chiefs must gain approval to work any hours that are in addition to their regular schedule in advance from the Fire Chief.
- b. Employees shall work thirty-five (35) hours that are in addition to their regular schedule in a calendar year before earning compensatory pay or compensatory time off on an hour for hour basis for hours worked in excess of their regular normal work schedule. This language (2b.) shall sunset at the expiration of this agreement. If the agreement is extended beyond 09/30/15, this provision will sunset as of 09/30/15.

3. Description of Compensatory Pay Benefits

- a. Compensatory pay is paid at the forty (40) hour hourly rate for each hour.
- b. Compensatory time earned can be converted to cash at the employee's forty (40) hour hourly rate.
- c. Maximum accrual shall be one hundred sixty (160) hours.

ARTICLE IX– HEALTH AND OTHER INSURANCE BENEFITS

A. Health

The City shall continue to make available group medical, dental and vision benefits to all association employees. A copy of the medical, dental and vision plan brochures may be obtained from the Human Resources Office.

1. Effective Date of Coverage

An employee and eligible dependent(s) shall become eligible to participate in the City's health insurance plans described herein. Effective the first of the month following the employee's date of hire, any required employee payroll deduction shall begin with the first full pay period following the effective date of coverage and shall continue through the end of the month in which the employee separates from employment. All employee contributions shall be deducted on a pre-tax basis.

2. California Public Employees' Retirement System (CalPERS) Public Employees' Medical and Hospital Care Act (PEMHCA)

The City presently contracts with CalPERS to provide medical coverage. The City is required under CalPERS PEMHCA to make a contribution to retiree medical premiums. A retiree's right to receive a City contribution, and the City's obligation to make payment on behalf of retirees, shall only exist as long as the City contracts with CalPERS for medical insurance, except as provided in Article VIII(4)(b). In addition, while the City is in CalPERS, its obligations to make payments on behalf of retirees shall be limited to the minimum payment required by law.

a. PEMHCA Employer Contributions

The City shall contribute on behalf of each employee the mandated minimum sum per month toward the payment of premiums for medical insurance under the PEMHCA program. As the mandated minimum is increased, the City shall make the appropriate adjustments by decreasing its flex benefits contribution accordingly as defined in the following sub-section.

b. Maximum Employer Contributions

For the term of this agreement, the City's maximum monthly employer contribution for each employee's health and other insurance premiums are set forth as follows:

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- i. Effective with the first health insurance deduction following City Council ratification of this agreement, the City contribution shall be the sum of the participating Orange County Blue Shield HMO PEMHCA Plan plus the Vision Service Plan (VSP) vision premiums for each of the following categories:
 - a. Employee only ("EE")
 - b. Employee + one dependent ("EE +1")
 - c. Employee + two or more dependents ("EE +2")

The maximum City contribution shall be based on the employee's enrollment in each plan. The parties agree that the mandated minimum PEMHCA contribution referenced above in paragraph 2a is included in the sums stated above in this subsection. If the employee enrolls in a plan wherein the costs exceed the City contribution, the employee is responsible for all additional premiums through pre-tax payroll deductions.

- ii. Effective January 1, 2015, the City contribution in each category shall not increase. Any increase in premiums above the City's 2014 contribution cap will be the responsibility of the employee.

3. Dental Insurance

The annual maximum benefit for the Delta Dental PPO plan is \$2000.

- a. Effective with the first health insurance deduction following City Council ratification of this agreement, the maximum City contribution shall be equivalent to the premium for the Delta Dental PPO plan based on the employee's enrollment of employee only ("EE"), employee plus one dependent ("EE+1") or employee plus two or more dependents ("EE+2").
- b. Effective January 1, 2015, the City contribution shall not increase. contribution cap will be the responsibility of the employee.

FIRE MANAGEMENT ASSOCIATION

2014 Health Premiums and Contributions

Effective 1/1/2014

FMA

(Employees who enrolled in Medical and Vision Plans)

Plan	Tier	Monthly Premium	Employer Monthly Contribution	Employee Monthly Contribution	Employee Bi-Weekly Contribution
PERS Anthem HMO Select	Single	536.99	498.73	38.26	17.66
	Two-Party	1073.98	997.47	76.51	35.31
	Family	1396.17	1296.70	99.47	45.91
PERS Anthem HMO Traditional	Single	592.20	498.73	93.47	43.14
	Two-Party	1184.40	997.47	186.93	86.28
	Family	1539.72	1296.70	243.02	112.16
PERS Blue Shield HMO	Single	543.21	498.73	44.48	20.53
	Two-Party	1086.42	997.47	88.95	41.05
	Family	1412.35	1296.70	115.65	53.38
PERS Blue Shield NetValue	Single	457.17	432.03	25.14	11.60
	Two-Party	914.34	864.06	50.28	23.21
	Family	1188.64	1123.27	65.37	30.17
PERS Health Net Salud y Mas	Single	489.82	489.82	0.00	0.00
	Two-Party	979.64	979.64	0.00	0.00
	Family	1273.53	1273.53	0.00	0.00
PERS Health Net SmartCare	Single	568.51	498.73	69.78	32.21
	Two-Party	1137.02	997.47	139.55	64.41
	Family	1478.13	1296.70	181.43	83.74
PERS Unitedhealthcare	Single	521.01	498.73	22.28	10.28
	Two-Party	1042.02	997.47	44.55	20.56
	Family	1354.63	1296.70	57.93	26.74
PERS Kaiser	Single	602.79	488.11	114.68	52.93
	Two-Party	1205.58	976.23	229.35	105.85
	Family	1567.25	1269.09	298.16	137.61
PERS Choice	Single	612.25	481.91	130.34	60.16
	Two-Party	1224.50	963.82	260.68	120.31
	Family	1591.85	1252.96	338.89	156.41
PERS Select	Single	586.32	441.41	144.91	66.88
	Two-Party	1172.64	882.82	289.82	133.76
	Family	1524.43	1147.67	376.76	173.89
PERS Care	Single	638.22	531.53	106.69	49.24
	Two-Party	1276.44	1063.07	213.37	98.48
	Family	1659.37	1381.98	277.39	128.03

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PORAC	Single	634.00	503.33	130.67	60.31
	Two-Party	1186.00	955.83	230.17	106.23
	Family	1507.00	1214.31	292.69	135.09
Delta Dental PPO	Single	65.00	60.75	4.25	1.96
	Two-Party	121.40	113.42	7.98	3.68
	Family	160.00	149.48	10.52	4.86
Delta Care HMO	Single	28.88	26.54	2.34	1.08
	Two-Party	49.10	45.12	3.98	1.84
	Family	75.10	69.01	6.09	2.81
VSP	Single	25.94	23.87	2.07	0.96
	Two-Party	25.94	23.87	2.07	0.96
	Family	25.94	23.87	2.07	0.96

Medical Opt Out Benefit: \$200.00 per month (\$92.31 bi-weekly)

Employee and City Contributions subject to change as a result of contract negotiations

4. Retiree (Annuitant) Coverage

As required by the Government Code retired employees (annuitants) shall have available the ability to participate in the PEMHCA program. The City's requirement to provide retirees and/or annuitants medical coverage is solely governed by the Government Code requirement to extend this benefit to retirees (annuitants). While the City is contracted with CalPERS to participate in the PEMHCA program, CalPERS shall be the sole determiner of eligibility for retiree and/or annuitant to participate in the PEMHCA program.

a. City Contribution (Unequal Contribution Method) for Retirees

As allowed by the Government Code and the CalPERS Board, and requested by the Association, the City shall use the Unequal Contribution Method to make the mandated minimum allowable City contribution on behalf of each retiree or annuitant.

b. Termination of Participation in the CalPERS PEMHCA program – Impact to Retirees

The City's requirement to provide retirees (annuitants) medical coverage is solely governed by the Government Code requirement that PEMHCA agencies extend this benefit to retirees (annuitants). If by agreement between the Association and the City or if the City elects to impose termination of its participation in the PEMHCA program, retirees (annuitants) shall no longer be eligible for City provided medical insurance.

In the event that the City terminates its participation in the PEMHCA program, the retiree medical subsidy program in place per Resolution No. 2002-120, Exhibit B, to the Memorandum of Understanding shall be reinstated. The City shall make any necessary modifications to conform to the new City sponsored medical insurance plan.

5. Additional Costs for Participation in the PEMHCA Program

a. Retiree and/or Annuitant Coverage

The Association shall pay to the City an amount equal to \$1.00 per month for each additional retiree and/or annuitant in the bargaining unit who elects to participate in the PEMHCA plan but is not participating in the City sponsored retiree medical program as of the beginning of a pay period after the PEMHCA program is in place.

Each January 1st the amount per month paid to the City for each retiree and/or annuitant described above shall increase by the amount PEMHCA requires the City to pay on behalf of each retiree (annuitant). Article VIII (A) (4) (a) above provides an example of expected payments per retiree or annuitant per month.

In the event of passage of state legislation, judicial rulings, or CalPERS board actions that increases the mandatory minimum monthly contribution for retirees (annuitants), the Association shall pay an equal amount to the City.

Payments shall be made the first of the month (following implementation). If the Association fails to make timely payments for two consecutive months, the City shall implement a decrease in the supplemental benefit contribution to health insurance for each unit employee by an amount equal to the total increased cost paid by the City. (For example, if the increased cost for retirees equals \$6,000 per year, the monthly supplemental benefit for each employee will be decreased as follows: \$6,000 divided by twelve (months) = \$500, which is then divided by the number of employees receiving supplemental benefits).

b. Termination Clause

The City and Association may each request termination of the City's contract with CalPERS after the announcement of state legislation,

judicial rulings, or a CalPERS board action that changes the employer's contribution, insurance premiums or program changes to the CalPERS medical plan.

The City and Association may elect to terminate its participation in the CalPERS PEMHCA program by mutual agreement through the meet and confer process between the Association and the City.

6. Medical Cash-Out

If an employee is covered by a medical program outside of a City-provided program (evidence of which must be supplied to the Human Resource Office), they may elect to discontinue City medical coverage and receive ninety two dollars and thirty-one cents (\$92.31) bi-weekly. An employee may also elect to discontinue vision coverage. The employee premium paid for vision coverage will be applied toward medical premium.

B. Section 125 Employee Plan

The City shall provide an Internal Revenue Code Section 125 employee plan that allows employees to use pre-tax salary to pay for regular childcare, adult dependent care and/or medical expenses as determined by the Internal Revenue Code.

C. Post Retirement Medical Savings Plan

The Association may request to reopen this agreement during its term to implement an employee funded, post-retirement medical savings plan, at no cost to the City.

D. Life and Accidental Death and Dismemberment

Each employee shall be provided with \$50,000 (fifty thousand) life insurance and \$50,000 (fifty thousand) accidental death and dismemberment insurance paid for by the City. Each employee shall have the option, at his/her own expense, to purchase additional amounts of life insurance and accidental death and dismemberment insurance to the extent provided by the City's current providers. Evidence of insurability is contingent upon total participation in additional amounts.

E. Long Term Disability Insurance

This program provides, for each incident of illness or injury, a waiting period of thirty (30) calendar days, during which the employee may use accumulated sick leave, general leave, or the employee may elect to be in a non-pay status. Subsequent to the thirty (30) day waiting period, the employee will be covered by an insurance plan paid for by the City, providing 66 2/3% (sixty six and two-third percent) of the first \$12,500 (twelve thousand five hundred) of the employee's basic monthly earnings.

The maximum benefit period for disability due to accident or sickness shall be to age 65 (sixty-five).

Days and months refer to calendar days and months. Benefits under the plan are integrated with sick leave, Worker's Compensation, Social Security and other non-private program benefits to which the employee may be entitled. Disability is defined as: "The inability to perform all of the duties of regular occupation during two years, and thereafter the inability to engage in any employment or occupation, for which he is fitted by reason of education, training or experience." Rehabilitation benefits are provided in the event the individual, due to disability, must engage in another occupation. Survivor's benefit continues plan payment for three (3) months beyond death. A copy of the plan is on file in the Human Resources office.

F. Miscellaneous

1. City Paid Premiums While on Medical Disability

When an employee is off work without pay for reason of medical disability, the City shall maintain the City paid employee's insurance premiums during the period the employee is in a non-pay status for the length of said leave, not to exceed twenty-four (24) months.

2. Insurance and Benefits Advisory Committee

The City and the Association participate in a City-wide joint labor and management insurance and benefits advisory committee to discuss and study issues relating to insurance benefits available for employees.

FIRE MANAGEMENT ASSOCIATION

3. Health Plan Over-Payments

Unit employees shall be responsible for accurately reporting the removal of ineligible dependents from health plan coverage. The City shall have the right to recover any premium paid by the City, on behalf of ineligible dependents. Recovery of such over-payments shall be made as follows:

a. Reduction of Employee's Bi-Weekly Salary Warrant

The employee's bi-weekly salary warrant shall be reduced by one-half (1/2) of the amount of the bi-weekly over-payment. Such reduction shall continue until the entire amount of the over-payment is recovered.

b. Notice of Ineligible Dependents

The City shall use its best efforts to advise all unit employees of their obligation to report changes in the status of dependents, which affect their eligibility.

c. Twelve Month Recovery Period

The City shall be entitled to recover a maximum of twelve (12) months of premium over-payments. Neither the employee nor the dependent shall be liable to the City other than as provided herein.

ARTICLE X - LEAVE BENEFITS

A. General Leave

1. Accrual

Employees accrue General Leave at the accrual rates outlined below. General Leave may be used for any purpose, including vacation, sick leave and personal leave. Employees shall accrue General Leave at their appropriate assigned work schedule rate, either forty (40) hour or fifty six (56) hour workweek. In the event of a change in work schedules, which must be at the beginning of a pay period, payroll shall change the accrued General Leave balance and accrual rate based on the new schedule using the conversion factor of .7143. Personnel who change from a fifty-six (56) hour schedule to a forty (40) hour schedule shall multiply the existing General Leave by .7143. Personnel who change from a forty (40)

FIRE MANAGEMENT ASSOCIATION

hour schedule to a fifty-six (56) hour schedule shall divide their existing General Leave by .7143.

Years of Service	General Leave Accrual 40-Hour Rate	General Leave Accrual 56-Hour Rate
First through Fourth Year	176 Hours	246.4 Hours
Fifth through Ninth Year	200 Hours	280.0 Hours
Tenth through Fourteenth Year	224 Hours	313.6 Hours
Fifteenth Year and Thereafter	256 Hours	358.4 Hours

2. Eligibility and Approval

General Leave must be pre-approved; except for illness, injury or family sickness, which may require a physician's statement for approval. Accrued General Leave may not be taken prior to six (6) months' service except for illness, injury or family sickness. General Leave accrued time is to be computed from hiring date anniversary. Employees shall not be permitted to take General Leave in excess of actual time earned. Employees on a forty (40) hour schedule shall not accrue General Leave in excess of six hundred forty (640) hours; fifty six (56)-hour employees shall not accrue General Leave in excess of eight hundred and ninety six (896) hours.

General Leave accumulated in excess of six hundred forty (640) hours for forty (40) hour schedule employees and General Leave accumulated in excess of eight hundred and ninety six (896) hours for fifty-six (56) hour employees shall be paid at the base hourly rate of pay, on the first pay day following such accumulation.

Employees may not use their General Leave to advance their separation date on retirement or other separation from employment.

3. Conversion to Cash

Twice during each fiscal year, each employee shall have the option to convert into a cash payment up to a total of one hundred twenty (120) hours of earned General Leave benefits. The employee shall give two (2) weeks advance notice of his/her desire to exercise such option.

B. Sick Leave

1. Accrual

No employee shall accrue sick leave.

2. Credit

Employees assigned to FMA shall carry forward their sick leave balance and shall no longer accrue sick leave credit.

3. Usage

Employees may use accrued sick leave for the same purposes for which it was used prior to the employee's assignment to FMA.

4. Family Sick Leave

The City will provide family and medical care leave for eligible employees that meet all requirements of State and Federal law. Rights and obligations are set forth in the Department of Labor Regulations implementing the Family Medical Leave Act (FMLA), and the regulations of the California Fair Employment and Housing Commission implementing the California Family Rights Act (CFRA).

5. Pay Off At Termination

- a. Employees covered by this agreement and on the payroll on November 20, 1978 shall be entitled to the following sick leave payoff plan:

At involuntary termination by reason of industrial or non-industrial disability, or by death, or by retirement, employees shall be compensated at their then current rate of pay for seventy-five percent (75%) of all unused sick leave accumulated as of July 1, 1972, plus fifty percent (50%) of unused sick leave accumulated subsequent to July 1, 1972, up to a maximum of seven hundred twenty (720) hours of unused, accumulated sick leave, except as provided in paragraph 4 below.

Upon termination for any other reason, employees shall be compensated at their current forty (40) hour equivalent rate of pay for fifty percent (50%) of all unused, accumulated sick leave.

FIRE MANAGEMENT ASSOCIATION

The maximum number of hours paid off at termination will be a total of seven hundred twenty (720) hours.

Example:

Employee has one thousand nine hundred twenty (1920) hours of accrued sick leave. $1920 \text{ hours} \times 50\% = 960 \text{ hours}$. Maximum pay off is seven hundred twenty (720) hours. $\text{Pay off} = 720 \text{ hours} \times \text{employee's current forty (40) hour equivalent pay rate}$.

- b. Employees hired after November 20, 1978 shall be entitled to the following sick leave payoff plan:

Upon termination, all employees shall be paid, at their then current forty (40) hour equivalent rate, for twenty-five percent (25%) of unused, earned sick leave to four hundred eighty (480) hours accrued, and for thirty-five percent (35%) of all unused, earned sick leave in excess of four hundred eighty (480) hours, but not to exceed seven hundred twenty (720) hours, except as provided in paragraph 4 below.

- c. Except as provided in paragraph 4 below, no employee shall be paid at termination for more than seven hundred twenty (720) hours of unused, accumulated sick leave. However, employees may utilize accumulated sick leave on the basis of "last in, first out" meaning that sick leave accumulated in excess of the maximum for payoff may be utilized first for sick leave, as defined in Personnel Rule 18-8.
- d. Employees who had unused, accumulated sick leave in excess of seven hundred twenty (720) hours as of July 5, 1980, shall be compensated for such excess sick leave remaining on termination under the formulas described in paragraphs a and b above. In no event shall any employee be compensated upon termination for any accumulated sick leave in excess of the "cap" established by this paragraph (i.e., 720 hours plus the amount over seven hundred twenty (720) hours existing on July 5, 1980). Employees may continue to utilize sick leave accrued after that date in excess of such "cap" on a "last in, first out" basis.
- e. To the extent that any "capped" amount of excess sick leave over seven hundred twenty (720) hours is utilized, the maximum compensable amount shall be correspondingly reduced. (Example: Employee had one thousand (1,000) hours

FIRE MANAGEMENT ASSOCIATION

accumulated. Six months after July 5, 1980, employee has accumulated another forty eight (48) hours. Employee is then sick for one hundred (120) hours. Employee's maximum sick leave "cap" for compensation at termination is now reduced by seventy two (72) hours to nine hundred twenty-eight (928) hours.

C. Bereavement Leave

Employees shall be entitled to Bereavement Leave not to exceed thirty (30) work hours in each instance of death in the immediate family. Immediate family is defined as father, mother, sister, brother, spouse, registered domestic partner, children, grandfather, grandmother, stepfather, stepmother, step grandfather, step grandmother, grandchildren, stepsisters, stepbrothers, mother-in-law, father-in-law, son-in-law, daughter-in-law, brother-in-law, sister-in-law, stepchildren, or wards of which the employee is the legal guardian.

Employees assigned to the fifty-six (56) hour work week for suppression assignments shall be entitled to Bereavement Leave not to exceed forty-eight (48) work hours in each instance of death in the immediate family, as defined above.

ARTICLE XI – CITY RULES

The City's Personnel Rules are incorporated into this Agreement by reference as though set forth in full. All City Personnel Rules shall apply to Association members, however, to the extent this MOU modifies the City's Personnel rules, the Personnel Rules as modified will apply to Association members.

ARTICLE XII -- MISCELLANEOUS

A. Vehicle Policy

1. Approval is required by the City Administrator or his/her designee for any City vehicle to be taken home by an employee.
2. The auto allowance for qualifying employees shall be one hundred sixty-one dollars and fifty-three cents (\$161.53) bi-weekly.
3. The monthly automobile allowance shall not be reduced during the term of this agreement.

FIRE MANAGEMENT ASSOCIATION

4. Eligibility for automobile allowance and the use of City vehicles shall be determined in accordance with the Administrative Regulation, Vehicle Use Policy and the City's Fleet Management Program.
5. Only employees that reside within thirty five (35) miles of the City's limits may be assigned a City vehicle.

An employee assigned a vehicle may be required to be able to report directly to work or any emergency situation, at the direction of the Fire Chief or his/her designee. Use of the assigned vehicle for more than minimal personal use is not authorized.

B. Deferred Compensation Loan Program

Employees may borrow up to fifty percent (50%) of their deferred compensation funds for critical needs such as medical costs, college tuition, or purchase of a home, pursuant to program standards and regulations.

C. Association Business

An allowance of fifty (50) hours per year shall be established for the purpose of allowing authorized representatives of the Association to represent employees in their employment relations.

D. Modified Return To Work Policy

The City and Association agree to meet and confer during the term of this agreement to establish a modified return to work policy for employees who experience an industrial or non-industrial injury or illness.

E. Controlled Substance and Alcohol Testing

The City maintains the right to conduct a controlled substance and/or alcohol test during working hours of any employee that it reasonably suspects is under the influence of alcohol or a controlled substance in the workplace.

F. Grievance Hearing Officer Fees

The City and Association agree that for any personnel matter, pursuant to Personnel Rules 19 and 20, whereby a hearing officer is mutually agreed upon to render an opinion, the hearing officer costs shall be shared equally by the City and Association.

G. Employer-Employee Relations Resolution

During the term of this agreement, the City and the Association agree to meet and confer to update the Employer Employee Relations Resolution to reflect current state law.

H. Alternative Dispute Resolution Agreement

The ADR agreement between the City and FMA as executed on April 1, 2013 is herein referenced as Exhibit D.

FIRE MANAGEMENT ASSOCIATION

ARTICLE XIII - CITY COUNCIL APPROVAL


It is the understanding of the City and the Association that this Memorandum of Understanding is of no force or effect whatsoever unless and until adopted by Resolution of the City Council of the City of Huntington Beach.

IN WITNESS WHEREOF, the parties hereto have executed this Memorandum of Understanding this 2nd day of September, 2014.

CITY OF HUNTINGTON BEACH

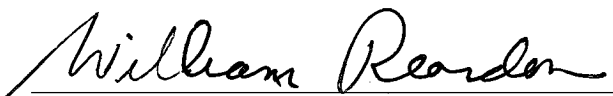

Fred Wilson
City Manager


Ken Domer
Assistant City Manager


Michele Warren
Director of Human Resources

HUNTINGTON BEACH FIRE MANAGEMENT ASSOCIATION


Mark Daggett
FMA President


William H. Reardon
FMA Vice-President


David McBride
FMA Representative

APPROVED AS TO FORM:


Jennifer McGrath
City Attorney

**FIRE MANAGEMENT ASSOCIATION
EXHIBIT A – SALARY SCHEDULE**

**Fire Management Association
Salary Schedule**

4.75% Effective September 13, 2014

40-Hour Rate

Job Code	Classification	Pay Grade	A	B	C	D	E
0031	Fire Battalion Chief	FMA031	67.05	70.74	74.63	78.73	83.07
0026	Fire Division Chief	FMA026	77.37	81.62	86.11	90.85	95.84

56-Hour Rate

Job Code	Classification	Pay Grade	A	B	C	D	E
0031	Fire Battalion Chief	FMA031	47.89	50.53	53.31	56.24	59.33
0026	Fire Division Chief	FMA026	55.27	58.30	61.51	64.89	68.45

Monthly Rate

Job Code	Classification	Pay Grade	A	B	C	D	E
0031	Fire Battalion Chief	FMA031	11,622.00	12,261.60	12,935.87	13,646.53	14,398.80
0026	Fire Division Chief	FMA026	13,410.80	14,147.47	14,925.73	15,747.33	16,612.27

**FIRE MANAGEMENT ASSOCIATION
EXHIBIT A – SALARY SCHEDULE**

**Fire Management Association
Salary Schedule**

2.0% Effective September 27, 2014

40-Hour Rate

Job Code	Classification	Pay Grade	A	B	C	D	E
0031	Fire Battalion Chief	FMA031	68.39	72.15	76.12	80.30	84.73
0026	Fire Division Chief	FMA026	78.92	83.25	87.83	92.67	97.76

56-Hour Rate

Job Code	Classification	Pay Grade	A	B	C	D	E
0031	Fire Battalion Chief	FMA031	48.85	51.54	54.38	57.36	60.52
0026	Fire Division Chief	FMA026	56.38	59.47	62.74	66.19	69.82

Monthly Rate

Job Code	Classification	Pay Grade	A	B	C	D	E
0031	Fire Battalion Chief	FMA031	11,854.27	12,506.00	13,194.13	13,918.67	14,686.53
0026	Fire Division Chief	FMA026	13,679.47	14,430.00	15,223.87	16,062.80	16,945.07

**FIRE MANAGEMENT ASSOCIATION
EXHIBIT B – SERVICE CREDIT SUBSIDY**

An employee who has retired from the City and meets the plan participation requirements shall receive a monthly Service Credit Subsidy to reimburse the retiree for the payment of qualified medical expenses incurred for the purchase of medical insurance.

Plan Participation Requirements

1. At the time of retirement the employee has a minimum of ten (10) years of continuous regular (permanent) City service or is granted an industrial disability retirement; and
2. At the time of retirement, the employee is employed by the City; and
3. Following official separation from the City, the employee is granted a retirement allowance by the California Public Employees' Retirement System (CalPERS).

The City's obligation to pay the Service Credit Subsidy as indicated shall be modified downward or cease during the lifetime of the retiree upon the occurrence of any one of the following:

- a. On the first of the month in which a retiree or dependent reaches age sixty five (65) or on the date the retiree or dependent can first apply and become eligible, automatically or voluntarily, for medical coverage under Medicare (whether or not such application is made) the City's obligation to pay Service Credit Subsidy may be adjusted downward or eliminated.
- b. In the event of the death of an eligible employee, whether retired or not, the amount of the Service Credit Subsidy benefit which the deceased employee was eligible for at the time of his/her death, shall be paid to the surviving spouse or dependent for a period not to exceed twelve (12) months from the date of death.

**FIRE MANAGEMENT ASSOCIATION
EXHIBIT B – SERVICE CREDIT SUBSIDY**

4. Minimum Eligibility for Benefits

With the exception of an industrial disability retirement, eligibility for Service Credit Subsidy begins after an employee has completed ten (10) years of continuous regular (permanent) service with the City of Huntington Beach. Said service must be continuous unless prior service is reinstated at the time of his/her rehire in accordance with the City's Personnel Rules.

To receive the Service Credit Subsidy retirees are required to purchase medical insurance from City sponsored plans. The City shall have the right to require any retiree (annuitant) to annually certify that the retiree is purchasing medical insurance benefits.

5. Disability Retirees

Industrial disability retirees with less than ten (10) years of service shall receive a maximum monthly payment toward the premium for health insurance of \$120 (one hundred twenty). Payments shall be in accordance with the stipulations and conditions, which exist for all retirees.

6. Service Credit Subsidy

Payment shall not exceed dollar amount, which is equal to the qualified medical expenses incurred for the purchase of City sponsored medical insurance.

7. Maximum Monthly Service Credit Subsidy Payments

All retirees, including those retired as a result of disability whose number of years of service exceeds ten (10) continuous years of regular (permanent) service immediately prior to retirement shall be entitled to a maximum monthly Service Credit Subsidy by the City for each year of completed City service as follows:

**FIRE MANAGEMENT ASSOCIATION
EXHIBIT B – SERVICE CREDIT SUBSIDY**

Maximum Service Credit Subsidy Retirements After:

Years of Service	Service Credit Subsidy
10	\$ 120
11	135
12	150
13	165
14	180
15	195
16	210
17	225
18	240
19	255
20	270
21	285
22	299
23	314
24	329
25	344

The Service Credit Subsidy will be reduced every January 1st by an amount equal to any required amount to be paid by the City on behalf of the retiree (annuitant). Article VIII(A)(4)(a) provides an example of expected reductions per retiree per month.

8. Medicare

- a. All persons are eligible for Medicare coverage at age 65. Those with sufficient credited quarters of Social Security will receive Part A of Medicare at no cost. Those without sufficient credited quarters are still eligible for Medicare at age 65, but will have to pay for Part A of Medicare if the individual elects to take Medicare. In all cases, the participant pays for Part B of Medicare.
- b. When a retiree and his/her spouse are both 65 or over, and neither is eligible for paid Part A of Medicare, the Service Credit Subsidy shall pay for Part A for each of them or the maximum subsidy, whichever is less.

**FIRE MANAGEMENT ASSOCIATION
EXHIBIT B – SERVICE CREDIT SUBSIDY**

- c. When a retiree at age 65 is eligible for paid Part A of Medicare and his/her spouse is not eligible for paid Part A of Medicare, the spouse shall not receive the subsidy. When a retiree at age 65 is not eligible for paid Part A of Medicare and his/her spouse who is also age 65 is eligible for paid Part A of Medicare, the subsidy shall be for the retiree's Part A only.

9. Cancellation

- a. For retirees/dependents eligible for paid Part A of Medicare, the following cancellation provisions apply:
 - i. Coverage for a retiree under the Service Credit Subsidy Plan will be eliminated on the first day of the month in which the retiree reaches age 65.
 - ii. At age 65 retirees are eligible to make application for Medicare. Upon being considered "eligible to make application," whether or not application has been made for Medicare, the Service Credit Subsidy Plan will be eliminated.

FIRE MANAGEMENT ASSOCIATION
EXHIBIT C – VOLUNTARY CATASTRPHIC LEAVE DONATION PROGRAM

Guidelines

1. Purpose

The purpose of the voluntary catastrophic leave donation program is to bridge employees who have been approved leave time to either; return to work, long-term disability, or medical retirement. Employees who accrue Vacation, General Leave or Exempt Compensatory Time may donate such leave to another employee when a catastrophic illness or injury befalls that employee or because the employee is needed to care for a seriously ill family member. The Leave Donation Program is Citywide across all departments and is intended to provide an additional benefit. Nothing in this program is intended to change current policy and practice for use and/or accrual of Vacation, General, or Sick Leave.

2. Definitions

Catastrophic Illness or Injury - A serious debilitating illness or injury, which incapacitates the employee or an employee's family member.

Family Member - For the purposes of this policy, the definition of family member is that defined in the Family Medical Leave Act (child, parent, spouse or domestic partner).

3. Eligible Leave

Accrued Exempt Compensatory Time, Vacation or General Leave hours may be donated. The minimum donation an employee may make is two (2) hours and the maximum is forty (40) hours.

4. Eligibility

Permanent employees who accrue Vacation or General Leave may donate such hours to eligible recipients. Exempt Compensatory Time accrued may also be donated. An eligible recipient is an employee who:

- Accrues Vacation or General Leave;
- Is not receiving disability benefits or Workers' Compensation payments;
and
- Requests donated leave.

5. Transfer of Leave

The maximum donation credited to a recipient's leave account shall be the amount necessary to ensure continuation of the employee's salary during the employee's period of approved catastrophic leave. Donations will be voluntary, confidential and irrevocable. Hours donated will be

FIRE MANAGEMENT ASSOCIATION
EXHIBIT C – VOLUNTARY CATASTRPHIC LEAVE DONATION PROGRAM

converted into a dollar amount based on the hourly wage of the donor. The dollar amount will then be converted into accrued hours based on the recipient's hourly wage.

An employee needing leave will complete a Leave Donation Request Form and submit it to the Department Director for approval. The Department Director will forward the form to Human Resources for processing. Human Resources, working with the department, will send out the request for leave donations.

Employees wanting to make donations will submit an Authorization for Donation to the Human Resources Department (payroll).

All donation forms submitted to payroll will be date stamped and used in order received for each bi-weekly pay period. Multiple donations will be rotated in order to insure even use of time from donors. Any donation form submitted that is not needed will be returned to the donor.

Other

Please contact the Human Resources Department on questions regarding staff participation in this program.

**FIRE MANAGEMENT ASSOCIATION
EXHIBIT C – VOLUNTARY CATASTRPHIC LEAVE DONATION PROGRAM**

**Voluntary Catastrophic Leave Donation Program
Leave Request Form**

Requestor, Please Complete

According to the provisions of the Voluntary Catastrophic Leave Donation Program, I hereby request
donated Vacation, General Leave or Exempt Compensatory Time.

MY SIGNATURE CERTIFIES THAT:

- A Leave of absence in relation to a catastrophic illness or injury has been approved by my department; and
- I am not receiving disability benefits or Workers' Compensation payments.

Name: <i>(Please Print or Type: Last, First, MI)</i>	
Work Phone:	Department:
Job Title:	Employee ID#:
Requester Signature:	Date:
Department Director Signature of Support:	Date:
Human Resources Department-Use Only End donation date will bridge to: <input type="checkbox"/> Long Term Disability <input type="checkbox"/> Medical Retirement beginning <input type="checkbox"/> Length of FMLA leave ending <input type="checkbox"/> Return to work	End donation date:
Human Resources Director Signature:	Date signed:

Please return this form to the Human Resources Office for processing.

**FIRE MANAGEMENT ASSOCIATION
EXHIBIT C – VOLUNTARY CATASTRPHIC LEAVE DONATION PROGRAM**

**Voluntary Catastrophic Leave Donation Program
Leave Donation Form**

Donor, please complete

Donor Name: <i>(Please Print or Type: Last, First, MI)</i>	
Work Phone:	
Donor Job Title:	
Type of Accrued Leave:	Number of Hours I wish to Donate:
<input type="checkbox"/> Vacation	_____ Hours of Vacation
<input type="checkbox"/> Compensatory Time	_____ Hours of Exempt Compensatory Time
<input type="checkbox"/> General Leave	_____ Hours of General Leave

I understand that this voluntary donation of leave credits, once processed, is irrevocable; but if not needed, the donation will be returned to me. I also understand that this donation will remain confidential.

I wish to donate my accrued Vacation, Exempt Compensatory Time or General Leave hours to the Leave Donation Program for:

Eligible recipient employee's name (Last, First, MI):	
Donor Signature:	Date:

Please submit to Payroll in the Finance Department.

**FIRE MANAGEMENT ASSOCIATION
EXHIBIT D– ALTERNATIVE DISPUTE RESOLUTION AGREEMENT**

LABOR MANAGEMENT WORKERS' COMPENSATION ALTERNATIVE DISPUTE RESOLUTION AGREEMENT BETWEEN THE CITY OF HUNTINGTON BEACH AND THE FIRE MANAGEMENT ASSOCIATION

This Labor Management Alternate Dispute Resolution Agreement ("Agreement") entered into by and between the City of Huntington Beach ("City") and the Fire Management Association ("FMA") is created pursuant to California Labor Code Section 3201.7(a)(3)(c).

Nothing in this Agreement diminishes the entitlement of an employee to compensation payments for total or partial disability, temporary disability, or medical treatment fully paid by the employer as otherwise provided in Division 4 of the Labor Code. Nothing in this Agreement denies to any employee the right to representation by counsel at all stages during the alternative dispute resolution process.

Article I. Purpose

The purposes of this Agreement are:

1. To provide active employees claiming compensable injuries under Division 4 of the California Labor Code ("Workers' Compensation Law") with an expedited procedure to resolve medical disputes in accordance with Article IV, Section D of this Agreement to facilitate their prompt return to work at either full duties or a transitional duty assignment;
2. To provide retirees claiming a presumptive injury as defined by California Labor Code (hereinafter "Labor Code") section 3212 et seq. with an expedited procedure to resolve medical disputes in accordance with Article IV, Section D of the Agreement;
3. To reduce the number and severity of disputes between the City and covered employees, when those disputes relate to workers' compensation; and
4. To provide workers' compensation coverage in a way that improves labor management relations, improves organizational effectiveness, and reduces costs to the City.

These purposes will be achieved by utilizing an exclusive list of medical providers to be the sole and exclusive source of medical evaluations for disputed issues surrounding covered employees in accordance with California Labor Code Section 3201.7©.

Now, therefore, in consideration of the mutual terms, covenants and conditions herein, the parties agree as follows:

**FIRE MANAGEMENT ASSOCIATION
EXHIBIT D– ALTERNATIVE DISPUTE RESOLUTION AGREEMENT**

Article II. Term of Agreement

The City and FMA enter into this Agreement with the understanding that the law authorizing this Agreement is new, untested and evolving. The parties further understand that this Agreement governs a pilot program and that it will become effective after it is executed by the parties, submitted to the Administrative Director of the State of California, Department of Industrial Relations, Division of Workers' Compensation in accordance with Title 8, California Code of Regulations, Section 10202(d), and accepted by the Administrative Director as evidenced by the Director's letter to the parties indicating approval of the Agreement. This Agreement shall be in effect for eighteen (18) months from the date of the implementation of the program. Thereafter, it shall be reviewed and, if found to be effective will continue and remain in force from year to year unless terminated by either party. Any claim arising from an industrial injury sustained before the termination of this Agreement shall continue to be covered by the terms of this Agreement, until all medical issues related to the pending claim are resolved. Any medical issue resolved under this Agreement shall be final and binding.

The parties reserve the right to terminate this Agreement at any time for good cause, by mutual agreement or by act of the legislature. The terminating party must give thirty (30) days written notice to the other party. The parties agree to meet and confer in good faith to try and resolve the issues underlying the termination during the thirty day period prior to the termination of the Agreement. Upon termination of this Agreement, the parties shall become fully subject to the provisions of the California law to the same extent as they were prior to the implementation of this Agreement, except as otherwise specified herein.

Article III. Scope of Agreement

- A. This Agreement applies only to injuries, as defined by Workers' Compensation Law, claims by 1) active employees; 2) retirees who claim a presumptive injury as defined by California Labor Code Section 3212 et seq.; and 3) active employees who file a claim and subsequently retire before the claim is resolved. Retirees who filed claims while they were active employees are covered under this Agreement only for the purposes of petitions to reopen a pre-existing claim unless covered under A(2). This Agreement does not apply to any other retired employees. This Agreement does not cover post-retirement amendments to active claims.

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- B. Employees who are covered under this Agreement remain covered during the entire period of active employment.
- C. Injuries occurring and claims filed after termination of this Agreement are not covered by this Agreement.
- D. This Agreement is restricted to establishing an exclusive list of medical providers to be used for medical dispute resolution for the above-covered employees in accordance with California Labor Code Section 3201.7(c).

Article IV. Medical Provider

- A. This Agreement does not constitute a Medical Provider Network ("MPN"). Physicians who act as a covered employee's independent medical examiner ("IME") under this Agreement shall not act as the same employee's treating physician even if the physician has been pre-designated as the employee's treating physician, unless otherwise mutually agreed by the parties. Pre-designation of a physician must comply with the requirements set forth in Labor Code section 4600(d)(1).
- B. All employees with a disputed medical issue as described below in Section D must be evaluated by an approved physician from the exclusive list of approved medical providers. Said physician will serve as an IME. If the IME needs the opinion of a different specialist, the IME shall refer the employee to a physician of the IME's choice even if that doctor is not on the approved list. The exclusive list of approved medical providers will be established when the Agreement has been approved by all parties.
- C. The exclusive lists of approved medical providers shall include the specialties as agreed upon by the parties.
- D. An IME shall be used for all medical disputes that arise in connection with a workers' compensation claim including but not limited to determination of causation, the nature and extent of an injury, the nature and extent of permanent disability and apportionment, work restrictions, ability to return to work, including transitional duty, future medical care, and resolution of all disputes arising from utilization review, including need for spinal surgery pursuant to Labor Code section 4062(b). The parties will use the originally chosen IME for all subsequent disputes under this Agreement. In the event that said IME is no longer available, then the parties shall utilize the next specialist on the list pursuant to Article IV G d (below). The IME process will begin when either party gives the other written notice of an objection. Objections from the City will be sent to the employee with a copy to

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the employee's legal representative if represented and a copy to FMA. Objections from the employee or employee's legal representative will be sent to the employee's assigned Claims Examiner with a copy to the Claims Manager. Objections will be sent within thirty days of receipt of a medical report or a utilization review decision. A letter delaying decision of the claim automatically creates a dispute. A subsequent acceptance of the claim and/or resolution of the dispute issue eliminates the need for completion of the dispute resolution process set forth in this Agreement.

- E. The exclusive list of approved medical providers shall serve as the exclusive source of medical-legal evaluations as well as all other disputed medical issues arising from a claimed injury.
- F. The parties hereby agree that from time to time the exclusive list of approved medical providers may be amended. For either party to add an IME to the exclusive list of medical providers, the party must provide notice, in writing, to the other party of its intent to add a physician to the list. Absent a written objection to the other party within thirty (30) calendar days of receipt of the written proposal, the addition will be made. In the event there is an objection, the physician will not be added to the list. A physician may only be deleted from the exclusive list of medical providers if he/she breaches the terms and conditions of the contract with the City or by mutual agreement of the parties.
- G. Appointments.
 - a. The Claims section of the Workers' Compensation Division shall make appointment(s) with the IME within ten days of the date of the objection and/or notification of delay for employees covered under this Agreement.
 - b. The employee shall be responsible for providing the Claims staff with his/her work schedule prior to an appointment being made so that appointments can be made during an employee's nonworking hours or the first or last hour of his/her workday. The amount of time allotted for hours spent at a physician's appointment during working hours will be subject to verification and will be allowed accordingly.
 - c. Mileage reimbursement to covered employees shall be consistent with City policy and in accordance with Labor Code Section 4600 (e)(2) unless transportation is provided by the City.
 - d. For purposes of appointments, the Claims staff will select the IME's by starting with the first name from the exclusive list of approved medical providers within the pertinent specialty, and continuing down the list, in

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order, until the list is exhausted, at which time the Claims staff will resume using the first name on the list.

- e. The City is not liable for the cost of any medical examination used to resolve the parties' disputes governed by this Agreement where said examination is furnished by a medical provider that is not authorized by this Agreement. Medical evaluations cannot be obtained outside of this Agreement for disputes covered by this Agreement.
- f. Both parties shall be bound by the opinions and recommendation of the IME selected in accordance with the terms of this Agreement.

Article V. Discovery

- A. Employees covered by this Agreement shall provide the Claims staff with fully executed medical, employment and financial releases and any other documents reasonably necessary for the City to resolve the employee's claim, when requested.
- B. The parties agree they have met and conferred on the language of the medical/financial/employment releases to be used under this Agreement. If said releases cause undue delay and/or unforeseen adverse impact(s) to the City and/or the FMA and/or its members, then either party may request a meet and confer regarding said under delay and/or adverse impact(s). The parties shall meet and confer within 30 days of a party's request to meet and confer.
- C. Employees shall cooperate in providing a statement.
- D. This Agreement does not preclude a formal deposition of the applicant or the physician when necessary. Attorney's fees for employee depositions shall be covered by Labor Code section 5710. There will be no attorney's fees for doctor's depositions.

Article VI. General Provisions

- A. The Agreement constitutes the entire understanding of the parties and supersedes all other Agreements, oral or written, with respect to the subject matter in this Agreement.
- B. This Agreement shall be governed and construed pursuant to the laws of the State of California.
- C. This Agreement, including all attachments and exhibits, shall not be amended, nor any provisions waived, except in writing, signed by the parties which expressly refers to this Agreement.

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- D. If any portion of this Agreement is found to be unenforceable or illegal the remaining portions shall remain in full force and effect.
- E. Notice required under this Agreement shall be provided to the parties as follows:
- F. In the event that there is any legal proceeding between the parties to enforce or interpret this Agreement or to protect or establish any rights or remedies hereunder, the prevailing party shall be entitled to its costs and expenses, including reasonable attorney's fees.